

Appl.No. 09/731,395

Amendment dated February 2, 2004

Reply to Office Action dated August 1, 2003

REMARKS

Claim Rejections - 35 U.S.C. § 112

Claims 3, 7, and 11 were rejected as indefinite for reciting the phrases "or", "and/or", or "such as." Applicants respectfully traverse.

Initially, applicants note that the phrase "such as" appears nowhere in the claims subject to this rejection. It did appear in claim 3 as originally filed, but was deleted by the preliminary amendment of December 4, 2000. Moreover, the examiner has failed to explain just exactly how the word "or" or the phrase "and/or" renders the claims indefinite to one of skill.

The use of alternative expressions is not per se indefinite. M.P.E.P. § 2173.05(h); The question in any rejection under § 112, ¶ 2, is whether one of ordinary skill can reasonably determine the scope of the claim at issue. M.P.E.P. §§ 2171, 2173.02. It is permissible where the alternative embodiments they define are clearly discernible. In re Gaubert, 187 U.S.P.Q. 664, 667-8 (C.C.P.A. 1975); In re Pavlecka, 138 U.S.P.Q. 118, 122-23 (C.C.P.A. 1963); Ex parte Holt, 19 U.S.P.Q.2d 1211, 1214 (Bd. Pat. App. & Int. 1991); Ex parte Head, 214 U.S.P.Q. 551, 553 (Bd. Pat. App. & Int. 1981).

In claim 3, the word "or" appears once, in the phrase "one or more [carrier materials] selected from the group consisting of zeolites, . . . etc." The examiner has not

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explained how one of skill would not know that the claimed carrier material is met by one of listed materials or any combination thereof. In claim 11, one of skill would discern that the additional coating materials could have either or both of the recited properties. And in claim 7, one of skill would have no trouble determining what copolymers of mono- or di-N-substituted acrylamides fall within the claim.

Similar phrases have been challenged and upheld as permissible under the second paragraph of Section 112. In re Gaubert, 187 U.S.P.Q. 664, 667-8 (C.C.P.A. 1975) ("one or several pieces," "iron, steel, or any other magnetic material" are found definite); Ex parte Seeds, Appeal No. 1999-1489, 2002 W.L. 465411 (Bd. Pat. App. & Int.) ("steel or aluminum" found definite); Ex parte Nilssen, Appeal No. 96-3618, 1996 W.L. 33101027 (Bd. Pat. App. & Int.) ("transmit and/or receive" found definite as meaning only transmit, only receive, or transmit and receive); (Ex parte Michael, Appeal No. 94-3284, 1994 W.L. 1663260 (Bd. Pat. App. & Int.) ("one or more ceramic layer" found definite). Rejection of claims 3, 7, and 11 for the reasons given should not be maintained.

Claim Rejections - 35 U.S.C. §§ 102, 103

Claims 1-3, 5-21, and 23-36 were rejected as either anticipated by or obvious over either of U.S. 5,492,646 (Langley) or U.S. 6,290,988 (Van Vilsteren). As amended, the claims are believed to overcome these rejections. Neither reference discloses or suggests compounding a particulate rinse aid for a detergent composition having particle sizes of 0.1 mm to 35 mm with an LCST material. See Langley at column 10, lines 5-21, Van Vilsteren at

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column 3, lines 31-34, column 4, line 42 to column 5, line 5. Reconsideration and allowance of the claims as amended over the references of record is earnestly solicited.

Information Disclosure Statement

Applicants note that the Examiner did not consider DE 197 09 284 listed on applicants' March 30, 2001 PTO-1449. This document was cited in the specification at page 32, line 11, where its relevance as understood by applicants was explained. Applicants' March 30, 2001 Information Disclosure Statement therefore complied with 37 C.F.R. §§ 1.97 and 1.98, and the Examiner was obligated to consider every reference listed. M.P.E.P. §§ 609, 707.02 ("The examiner must consider all the prior art references . . . cited in the application . . . , including those cited by applicant in a properly submitted Information Disclosure Statement."). Applicants therefore request that consideration of DE 197 09 284, which was lined out on the PTO-1449 attached to the August 1, 2003 office action, be made of record in the next action.

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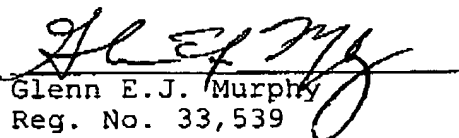
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CONCLUSION

In view of the amendments and remarks above, applicants ask for reconsideration and allowance of the claims. Applicants also ask for extension of the period for response three months to February 1, 2004, and authorize a charge to Deposit Account No. 01-1250 in the amount of 950.00 for the extension fee. Order No. 04-0042. Should any fees be due that have not been accounted for, the Commissioner is authorized to charge them to Deposit Account No. 01-1250.

Respectfully submitted,



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